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POWER AUTHORITY  
OF THE  
STATE OF NEW YORK

30 South Pearl Street  
Albany, New York

AGREEMENT FOR THE SALE  
OF NIAGARA PROJECT POWER AND ENERGY  
TO Niagara University

Service Tariff No. NP-1- Firm Non-Preference  
Hydroelectric Power and Energy

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August 2007

**POWER AUTHORITY OF THE STATE OF NEW YORK**

**30 South Pearl Street  
Albany, New York**

**AGREEMENT FOR THE SALE OF HYDROPOWER AND ENERGY**

Niagara University hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

**I. Definitions**

- a. Acceptance of the New License** shall mean the date upon which the Power Authority files its acceptance of the New License with FERC, or the date of the expiration of the existing original license, August 31, 2007, whichever occurs later.
- b. Agreement** means this Agreement.
- c. Authority** is the Power Authority of the State of New York.
- d. Contract Demand** will be the amounts set forth in Section II or such other amount as may be determined in accordance with the provisions of this Agreement.
- e. Customer** is Niagara University.
- f. Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.
- g. FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- h. FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which new license will become effective after expiration of the Project's original license issued on January 30, 1958.
- i. Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.
- j. NRA** means the federal Niagara Redevelopment Act (18 USC §§836, 836a)
- k. NYISO** means the New York Independent System Operator or any successor organization.

- I. **Project** means the Niagara Power Project, FERC Project 2216.
- m. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.
- n. **Relicensing Settlement Agreement** means the Niagara University Relicensing Settlement Agreement dated May 23, 2006 between Niagara University and the Authority.
- o. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).
- p. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

## II. Electric Service to be Provided

- a. The Authority shall provide Electric Service pursuant to Service Tariffs for Power and/or Energy to enable the Customer to receive its allocations from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amounts set forth below:

Firm Hydroelectric Power and Energy Service pursuant to  
Service Tariff No. NP-1 - 3,000 KiloWatts (Contract Demand)

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing allocation of Firm Non-preference Hydroelectric Power and Energy Service in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services (as defined in the rules and tariffs of the NYISO), nor renewable or "green" attributes (as may be defined from time to time by the New York Public Service Commission or other agency having jurisdiction over such matters) are included in such allocation.

- b. The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction.

## III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. NP-1 (NP-1), as now in effect and/or such superseding tariff(s) or other tariff(s) as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or

differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State.

#### **IV. Transmission and Delivery of Power and Energy**

Authority shall make Project Power and Energy available to Customer at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE") or arrange for another entity to do so on its behalf. Customer, or the entity acting as LSE on its behalf, shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

#### **V. Rates**

Project Power and Energy shall be sold to Customer hereunder at rates equivalent to the lowest production rate charged by the Power Authority (directly or indirectly) to an entire class of Western New York hydropower business customers (including for example, Replacement or Expansion Power customers) plus any charges assessed or imposed in connection with such supply by the New York Independent System Operator. Such rates are currently as set forth in the attached Service Tariff NP-1, which tariff may be amended from time to time consistent with the foregoing.

#### **VI. Appointment of Customer Agent**

Upon reasonable prior written notice to the Authority, Customer shall have the right to delegate to an agent any or all duties under this Agreement ("Customer's Agent") and the Authority acknowledges that such duties may be performed by Customer's Agent. Such duties delegated to Customer's Agent may include the keeping of all records required by Authority, the payment of any or all amounts due to the Authority under this Agreement and any or all such other duties contained in this Agreement as may be specified by Customer; provided that the Customer may choose to assume and perform any or all of the duties previously delegated to Customer's Agent and provided further that nothing herein, including Customer's designation of such an agent, shall be deemed to be approval by the Authority of an assignment of any of Customer's duties and obligations under its Agreement with the Authority. Customer may, on reasonable prior written notice to the Authority, designate a different party as Customer's Agent at any time during the term of this Agreement.

## VII. Term and Termination of Service

Once initiated, service under the Agreement shall continue until the earliest of (a) termination by Customer with respect to all or part of its allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2025, at which time a new agreement will be entered between the Authority and the Customer to provide Customer with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Niagara University Relicensing Settlement Agreement. The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules. The parties recognize that the provision of Power and Energy, as set forth in Section 3.4.1, constitutes substantial consideration to Niagara University for its assent to the Relicensing Settlement Agreement. Notwithstanding the foregoing, upon mutual agreement this Agreement shall be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority.

Nothing herein is intended to limit the rights of the Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 3 MW of Project Power and Energy available to Customer for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

## VIII. Notification

Correspondence involving the administration of this Agreement shall be addressed as follows:

To the Authority;           Manager – Power Contracts  
New York Power Authority  
123 Main Street  
White Plains, NY 10601

To the Customer:           President – Niagara University  
Niagara University, NY 14109

cc:           General Counsel – Niagara University  
Niagara University, NY 14109

**IX. Applicable Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

**X. Successors and Assigns**

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained, which consent shall not be unreasonably withheld.

**XI. Previous Agreements and Communications**

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. Such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

**XII. Acceptance and Approvals**

Upon approval of the Governor of the State of New York pursuant to Section 1009 of the Power Authority Act, and upon execution by the Parties, this Agreement, the provisions of which shall survive for the term hereof, together with the Service Tariffs and Rules both as they may be amended, shall constitute the contract between the Parties for Electric Service hereunder.

**XIII. Severability and Voidability**

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.

Notwithstanding the preceding paragraph, if any provision of this Agreement or the Relicensing Settlement Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's

interests are materially and adversely impacted by any such action, be void and unenforceable.

**XIV. Effectiveness of Agreement**

This Agreement shall take effect on the latest of: (i) one day after the "Acceptance of the New License" as defined in the Niagara University Relicensing Settlement Agreement, (ii) the date of this Agreement's execution under Article XII above or (iii) the effective date specified in NP-1.

**Niagara University**

BY Joseph S. Sevogre, cm

Title PRESIDENT

Date 8/29/07

(Seal)  
Attest by: Joseph M. Hubbert, cm.

Accepted:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

BY Frank S. McCullough, Jr.

Title Frank S. McCullough, Jr., Chairman

Date September 5, 2007

(Seal)  
Attest by: Anne B. Cahill

Anne B. Cahill, Corporate Secretary

ACKNOWLEDGEMENTS

STATE OF NEW YORK            )  
  )  SS:.  
COUNTY OF WESTCHESTER )

On this 5<sup>th</sup> day of September, 2007, before me personally came Frank S. McCullough, Jr. and Anne B. Cahill, to me known, who each being by me duly sworn, did severally depose and say that they reside in Rye, N.Y. and White Plains, N.Y., and that they are, respectively, Chairman and Corporate Secretary of Power Authority of the State of New York, a corporation described in and which executed the above instrument; that they know the seal of Power Authority of the State of New York aforesaid; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the Trustees of Power Authority of the State of New York, and that they signed their names thereto by like order.

*Lorna Johnson*  
LORNA JOHNSON  
NOTARY PUBLIC, State of New York  
No. 01JO4961652  
Qualified in Queens County  
Commission Expires Feb. 5, 2010

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street, Albany, NY 12207

Service Tariff No. NP-1

Schedule of Rates for Firm  
Hydroelectric Power and Energy Service

EFFECTIVE:

September 1, 2007

APPLICABLE:

To sale of Niagara Firm Hydroelectric Project Power and Energy to certain customers eligible for service under a Niagara Project relicensing agreement.

CHARACTER OF SERVICE:

Alternating current, 60 hertz, three-phase.

RATES (effective May 1, 2007):

Capacity Rate: \$4.98 per kilowatt per month of Billing Demand at the Project switchyard.

Energy Rate: 8.52 mills per kilowatt-hour

Future rates shall be as determined by the Authority consistent with the provisions of the Application for Service.

MINIMUM MONTHLY CHARGE:

The product of the Capacity Rate and the Billing Demand.

POWER FACTOR:

Not less than 95% lagging or leading, except as otherwise specified in the Customer's accepted Application for Electric Service.

**DEFINITIONS:**

**Billing Demand:** The Billing Demand shall be the lesser of a) Customer's Contract Demand or b) the maximum 30 minute integrated demand measured during the Billing Period adjusted for losses.

**Billing Energy:** Energy provided by Authority under this service tariff.

**Billing Period:** Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

**GENERAL PROVISIONS:**

General Provisions for service supplementing or modifying the Rules and Regulations for Power Service and Service Tariff No. NP – 1 with regard to deliveries to Customer are as follows:

**A Availability of Energy**

Where Customer is taking service solely from Authority, the Billing Energy shall be the total number of kilowatt-hours recorded on Customer's meter during the Billing Period, adjusted for losses.

Where Customer takes service from other sources in addition to service supplied hereunder, the Billing Energy shall be determined by multiplying the total number of kilowatt-hours recorded on Customer's meter during the Billing Period, adjusted for losses, times the ratio of the Contract Demand to the maximum 30 minute integrated demand measured during the Billing Period adjusted for losses. Such ratio shall not be greater than unity (1.0).

The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Customer if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer in later billing periods.

**B Adjustment of Rates**

To the extent not inconsistent with the attached Application for Electric Service, the rates contained in this Service Tariff NP-1 may be revised from time to time on not less than thirty (30) days written notice to Customer.

**C Delivery**

For the purpose of this Service Tariff, Power and/or Energy shall be deemed to be offered when Authority is able to supply Power and Energy to Customer or its agent

at the Niagara Project Switchyard. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Customer. If, despite such offer, there is a failure of delivery by Customer or its Delivery Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D Payment by Customer for Power and/or Energy

- 1 Customer shall pay for Power and/or Energy during any Billing Period the sum of a) and b) below:
  - a. For Firm Hydroelectric Power and Energy the capacity rate per kilowatt for Firm and Peaking Power & Energy specified in this Service Tariff or any modification thereof applied to Customer's Billing Demand for the Billing Period: and
  - b. The Energy rate specified in this Service Tariff or any modification thereof applied to the amount of Billing Energy delivered by Authority to Customer during such Billing Period.
2. Bills computed under Service Tariff NP-1 are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill and adjustments, if necessary, will be made thereafter.

E Supplementary Provision

Sections 454.2 (c) and 454.5 of the Rules are inapplicable to this Service Tariff.